

Billing Code 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

DHS-2005-0051

RIN 1660-AA44

44 CFR Part 206

Special Community Disaster Loans Program

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements the Special Community Disaster Loans Program authorized in the Community Disaster Loan Act of 2005 (2005 Act). This interim rule describes the procedures and requirements for a program designed to provide loans for essential services to local governments that have experienced a loss in revenue due to a major disaster. These regulations do not apply to the traditional Community Disaster Loans Program which is permanently authorized.

DATES: Effective: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments: Comments are due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket DHS-2005-0051, Special Community Disaster Loans Program, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: FEMA-rules@dhs.gov. Include Docket DHS-2005-0051, Special Community Disaster Loans Program in the subject line of the message.
- Facsimile: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, (fax) 202-646-4536. Include Docket DHS-2005-0051, Special Community Disaster Loans Program, in the subject line of the message.
- Mail or Hand Delivery/Courier: For paper, disk, or CD-ROM submissions, Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW., Washington, DC 20472. Include Docket DHS-2005-0051, Special Community Disaster Loans Program, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: James A. Walke, FEMA, 500 C Street, SW., Washington, DC 20472, or call (202) 646-2751, or e-mail james.walke@dhs.gov.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. FEMA also invites comments that relate to the economic, environmental, or federalism affects that might result from this interim rule. Comments that will provide the most assistance to FEMA in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket

number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472.

Background

This interim rule implements the Community Disaster Loan Act of 2005, Pub. L. 109-88. The 2005 Act authorizes FEMA to transfer \$750 million from the funds appropriated in the Second Emergency Supplemental Appropriations Act To Meet Immediate Needs Arising From The Consequences Of Hurricane Katrina, 2005, Pub. L. 109-62, to provide up to \$1 billion in loan authority. For loans issued pursuant to the 2005 Act, the 2005 Act adds three elements to the traditional program under section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5184: 1) the 2005 Act removes the \$5 million limit on individual loans; 2) the 2005 Act specifies that the loans are “to assist local governments in providing essential services;” and 3) the 2005 Act makes inapplicable the loan cancellation provision of section 417(c)(1) of the Stafford Act.

In determining what constitutes “essential services,” it is presumed that in light of the limited resources available to the governments impacted by major disasters whose revenue losses make them eligible for this program, proceeds from these loans will be limited to the performance of core municipal operating functions including police and fire protection, trash collection, school operation, revenue collection, and other services

related to protecting and promoting the health, safety, and public welfare of the community.

Under section 417 of the Stafford Act (42 U.S.C. 5184), loans may be provided to “local governments.” Section 102 of the Stafford Act (42 U.S.C. 5122) broadly defines “local government” to mean a county; municipality; city; town; township; local public authority; school district; special district; intrastate district; council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law); regional or interstate government entity or agency or instrumentality of a local government; an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State. 42 U.S.C. 5122(6); 44 CFR 206.2(a)(16). This broad definition covers entities having an executive, administrative, legislative, or judicial nature. It may include school districts, sheriffs’ offices, judicial bodies, district attorney offices, district courts, and water and sewage authorities.

Operators of private nonprofit facilities are not eligible for Special Community Disaster Loans as they do not meet the definition of local government under the Stafford Act. However, if a local government deems it appropriate, it may provide proceeds from a loan under this Program to an operator of a private nonprofit facility that provides the community essential services, such as a volunteer fire department, volunteer emergency medical provider, or a hospital. For example, it may provide loan proceeds to a volunteer fire department in the community for expenses not otherwise available under the Stafford Act or other Federal sources that would be necessary for the Fire Department to continue

to carry out their essential services to the community. Further, if the local government provides loan proceeds to the private nonprofit, the local government will be solely responsible for repayment of the loan and for fulfillment of all conditions of these regulations, which include the loan application and the promissory note.

This interim rule takes effect immediately in order to allow FEMA to provide these loans as soon as possible to the local governments already impacted by Hurricanes Rita and Katrina, as Congress anticipated in the speedy passage of the Act. However, FEMA still seeks comments on this rule, especially from local governments who are applying for Special Community Disaster Loans, or from local governments that are considering applying for Special Community Disaster Loans, as well as citizens of these communities. Because of the desire to provide assistance rapidly and because much of the financial information required for the traditional Community Disaster Loans Program is to determine cancellation eligibility, which does not apply to the Special Community Disaster Loans Program, FEMA has attempted to streamline the financial and other information requirements that local governments need to provide to apply for a loan. For example, FEMA recognizes that Hurricanes Katrina and Rita may have damaged or destroyed many of the records of applicants. Therefore, if FEMA finds that the applicant cannot provide any specific application requirements, FEMA may waive the requirement to provide certain information if it is consistent with congressional intent to expedite assistance while still maintaining appropriate accountability for Federal funds.

FEMA is also aware of its responsibility to the taxpayers to ensure that this program is operated with the appropriate level of accountability. Therefore, FEMA particularly welcomes comments on whether this interim rule effectively strikes the

balance of providing administrative flexibility to local governments while safeguarding taxpayer resources.

Administrative Procedure Act

In general, FEMA publishes a rule for public comment before issuing a final rule under the Administrative Procedure Act, 5 U.S.C. 553 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that procedure for good cause. The public benefit of this rule is the ability to issue loans under the Community Disaster Loan Act of 2005, Pub. L. 109-88, to assist local governments that have experienced a loss in revenue due to a major disaster so that those governments can provide essential municipal services. There is an immediate need for local governments impacted by Hurricanes Katrina and Rita to provide essential services to their citizens. Any delay in distributing these loans pending completion of notice and comment and publication of a final rule could have a severe impact on the health, safety, and welfare of the citizens of the affected local governments.

In accordance with 5 U.S.C. 553(d)(3), FEMA has determined that delaying implementation of this rule to await public notice and comment is unnecessary, impracticable, and contrary to the public interest. Delay is not in the public interest and is impracticable because of the immediate need for local governments impacted by Hurricanes Katrina and Rita to provide essential services to their citizens. FEMA also finds good cause, under 5 U.S.C. 553(d)(3), for this interim rule to take effect immediately. It would be impracticable and contrary to the public interest to subject this interim rule to prior notice and public comment, or to delay its taking effect.

Although FEMA has good cause to publish this rule without prior notice and

comment, FEMA values public comments. As a result, FEMA is soliciting public comments on this interim rule and may revise the final rule in response to those comments. In particular FEMA invites comments from local governments who are applying for Special Community Disaster Loans, or considering doing so, as well as citizens of these communities.

Executive Order 12866--Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a “significant regulatory action” is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This rulemaking is considered to be an economically significant regulatory action under section 3 (f) of Executive Order 12866. Accordingly, it has been reviewed by the Office of Management and Budget.

The requirements of this interim rule apply only to the Special Community Disaster Loans under the Community Disaster Loan Act of 2005, Pub. L. 109-88. Community Disaster Loans issued prior to the enactment of Pub. L. 109-88 or other loans not issued under the authority of the Pub. L. 109-88 are not covered under the regulations. Consequently, this interim rule will not impose any additional requirements on local governments that are not requesting a Special Community Disaster Loan.

Historically, FEMA has only provided an average of about \$8 million per year in Community Disaster Loans (\$233 million in the last 29 years), and no loans have been issued since Fiscal Year 1999. Only in one previous year has FEMA provided Community Disaster Loans that exceeded \$100 million. FEMA believes that this rule is economically significant as Congress has authorized \$1 billion in new loan authority and lifted the \$5 million limit on individual loans. The devastating impact of Hurricanes Katrina and Rita make it very possible that more than \$100 million in Special Community Disaster Loans could be made within the next year.

Further, the 2005 Act does not provide for loan cancellation, which is allowed under the traditional Community Disaster Loans Program. The term of a Special Community Disaster Loan is five years, unless extended by FEMA. FEMA may consider requests for an extension based on the financial condition of the local government. The total term of any loan under section 417(a) of the Stafford Act normally may not exceed ten years, but in extenuating circumstances involving financial hardship, the local government may request from FEMA an additional period beyond ten years to repay the indebtedness.

FEMA will also have discretion to allow localities facing unique economic

hardships to receive discounted interest rates, at levels consistent with the lowest rate offered by the Small Business Administration's disaster loan program. In addition, Special Community Disaster Loans will require either the State to co-sign the Promissory Note, or if the State declines to cosign the Promissory Note or cannot legally do so, the local government must pledge collateral security to cover the principal amount of the Note. In the event of default on the loan by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is "required by section 553 . . . , or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for interpretative rule involving the internal revenue laws of the United States" 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. The Unfunded Mandates Reform Act does not require an assessment in the case of an interim rule issued without prior notice and public comment. Nevertheless, FEMA does not expect this rule to result in such an expenditure. FEMA discusses this rule's effects elsewhere in this preamble.

Executive Order 13132, Federalism

This interim rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It will not preempt any State laws. In accordance with section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

National Environmental Policy Act

This interim rule falls within the exclusion category of 44 CFR 10.8 (d)(2)(ii), which addresses the preparation, revision, adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Because no other extraordinary circumstances have been identified, this interim rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

Paperwork Reduction Act of 1995

This interim rule will revise information collection requirements currently approved under the Paperwork Reduction Act of 1995. Under the Paperwork Reduction

Act, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number.

FEMA submitted an information collection request to the OMB for review and clearance in accordance with the review procedures of the Paperwork Reduction Act of 1995. OMB approved the requested revision of this information collection, which is assigned OMB control number 1660-0083 and expires on April 30, 2006.

List of Subjects in 44 CFR Part 206

Disaster Assistance, Community Disaster Loans, Loan Programs.

Accordingly, for the reasons set forth in the preamble, amend part 206 of Chapter I of title 44 of the Code of Federal Regulations as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS

DECLARED ON OR AFTER NOVEMBER 23, 1988

1. The authority citation for part 206 continues to read:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Amend the subpart K of the Section Contents of part 206, by adding the

following in proper numerical order:

Subpart K—Community Disaster Loans

Sec.

* * *

206.368-206.369 [Reserved]
206.370 Purpose and Scope
206.371 Loan program
206.372 Responsibilities

206.373 Eligibility criteria
206.374 Loan application
206.375 Loan administration
206.376 [Reserved]
206.377 Loan repayment
206.378-206.389 [Reserved]

3. Revise § 206.360 to read as follows:

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Stafford Act. Sections 206.360-206.367 of the subpart do **not** implement the Community Disaster Loan Act of 2005. (see §206.370).

4. Amend §206.370-206.377 as follows:

§ 206.370 Purpose and Scope.

(a) Purpose: These regulations (44 CFR 206.370 to 44 CFR 206.377) provide policies and procedures for local governments and State and Federal officials concerning the Special Community Disaster Loans program under section 417 of the Stafford Act and the Community Disaster Loan Act of 2005, Pub. L. 109-88.

(b) Scope: These regulations apply only to Special Community Disaster Loans under the Community Disaster Loan Act of 2005, Pub. L. 109-88. Community Disaster Loans issued prior to the enactment of Pub. L. 109-88 or other subsequent loans not issued under the authority of the Pub. L. 109-88 are not covered under 206.370 to 206.377.

§ 206.371 Loan program.

(a) General. The Associate Director may make a Special Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as

a result of a major disaster and which demonstrates a need for Federal financial assistance in order to provide essential services.

(b) Amount of loan. The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term fiscal year as used in this subpart means the local government's fiscal year.

(c) Interest rate. The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States. If an applicant can demonstrate unusual circumstances involving financial hardship, the Associate Director may approve a rate equal to the five year maturity rate plus 1 per centum, adjusted to the nearest 1/8 percent, and further reduced by one-half.

(d) Time limitation. The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year.

(e) Term of loan. The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider a request for an extension of a loan based on the local government's financial condition. The total term of any loan under section 417(a) of the Stafford Act normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment (see § 206.377(c)).

(f) Use of loan funds. The local government shall use the loaned funds to assist in providing essential services. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. The loan may not be used as the nonfederal share of any Federal program, including those under the Stafford Act.

(g) Relation to other assistance. Any Special Community Disaster Loans made under this program shall not reduce or otherwise affect any commitments, grants, or other assistance under the Stafford Act or part 206 of this title.

§ 206.372 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan or other format specified by FEMA and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, and loan settlement correspondence through the Governor's Authorized Representative (GAR) and the FEMA Regional Office to the FEMA Associate Director.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests resulting from major disasters.

(c) The Regional Director or designee shall review each loan application received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government and shall administer the loan until repayment is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director.

(f) The FEMA Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.373 Eligibility criteria.

(a) Local government. (1) The local government must be located within the area eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Special Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform essential governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential services to the community. Eligibility for other assistance under the Stafford Act does not, by itself, establish entitlement to such a loan.

(b) Loan eligibility -- (1) General. To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, and it must demonstrate a need for financial assistance in order to provide essential municipal services. *Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.*

(2) Substantial loss of tax and other revenues. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) Demonstrated need for financial assistance. The local government must demonstrate a need for financial assistance in order to perform essential governmental functions. The criteria used in making this determination may include some or all of the following factors:

- (i) Whether there are sufficient funds to meet current fiscal year operating requirements;
- (ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;
- (iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;
- (iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
- (v) Debt ratio (relationship of annual receipts to debt service);
- (vi) Displacement of revenue-producing business due to property destruction;
- (vii) Necessity to reduce or eliminate essential services; and
- (viii) Danger of municipal insolvency.

§ 206.374 Loan application.

(a) Application. (1) The local government shall submit an application for a Special Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.377(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy of the submission. The GAR may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) Financial requirements. (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.374(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results--Cash Position, and certification and assurances requested by the Associate Director.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must, unless impracticable, accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Special Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinances, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) Operating budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures.

(3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due.

(5) Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operating character should be estimated.

(c) Federal review. (1) The Associate Director or designee shall approve a Special Community Disaster Loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance as the result of the disaster to provide essential municipal services.

(2) Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised

application may be submitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) Special Community Disaster Loan. (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) Promissory note. (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see § 206.374(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(e) Waiver of Requirements. Notwithstanding any other provision of this or other sections promulgated pursuant to Pub. L. 109-88, the Associate Director may, upon the request of an applicant or loan recipient, waive any specific application requirement or financial reporting requirement (see, e.g., § 206.375(a)(2)) upon a finding by the Associate Director that the effects of the major disaster prevent the applicant from

fulfilling the application requirement and that waiving the requirements would be consistent with the purposes of the Community Disaster Loan Act of 2005.

§ 206.375 Loan administration.

(a) Funding. (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds.

(b) Financial management. (1) Each local government with an approved Special Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, the Department of Homeland Security Inspector General, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) Loan servicing. (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) FEMA will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) FEMA shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) Inactive loans. If no funds have been disbursed from the loan program, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA.

§ 206.376 [RESERVED]

§ 206.377 Loan repayment.

(a) Prepayments. The local government may make prepayments against loan at any time without any prepayment penalty.

(b) Repayment. Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by FEMA or FEMA's designated Disbursing Agency.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I = P \times R \times T$, where I=the amount of simple interest, P=the principal amount disbursed; R=the interest rate of the loan; and, T=the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest for up to five years. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) Additional time. In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to

repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

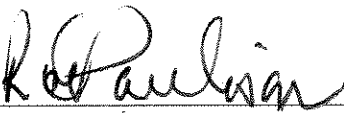
(2) The principal amount shall be the original principal plus related interest less any payments made.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate. A reduced rate may not be applied if it was not previously applied to the loan.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§ § 206.378 -- 206.389 [Reserved]

Dated: OCT 14 2005



R. David Paulison

Acting Director,

Emergency Preparedness and Response,

Federal Emergency Management Agency,

Department of Homeland Security.